P. O. Box 7970
Madison, Wisconsin 53707
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Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

Wisconsin
Department of Commerce

January 16, 2001

Mr. Marvin I. Strawn
McNally, Maloney & Peterson, S.C.
2600 North Mayfair Road, Suite 1080
Milwaukee, WI 53226-1309

Dear Mr. Strawn:

Thank you for your letter concerning the Bud's Mobil site owned by Ann and William Bender. We have had an opportunity to review the material you provided and, although all reimbursement decisions are made at time of actual claim review, we can provide you some general reactions and comments on the site.

In your letter you raise two points. The first point is the potential that the contaminant plumes at the two sites may have been combined artificially by the remedial actions taken on the properties. Second, you raise the issue of whether the plumes would have commingled naturally.

In terms of the merging of the two plumes, it does not appear that the statute recognizes any differentiation in application or coverage based upon how the two plumes may have merged. Whether the combination is by natural action or the remediation activities conducted on site, once the combination has taken place, the impact appears to be the same. In this case the Bender's are the owner of both properties and one contiguous contaminated area. This limits their coverage to one million.

There is less clarity on the question of whether the plumes would have commingled naturally. We do, however, have the following comments.

- The data that has been provided has some gaps that are important for determining the behavior of the contamination. These items include: 1) Information as to the degree of contamination at the Viola Quick Stop. 2) Groundwater elevations for all the surrounding wells, including well PZ-1 located near the former tank basin at Bud's Mobil and is needed to determine if groundwater flow moves more southerly or westerly at Bud's Mobil. 3) Historic groundwater elevations during pumping operations and when operations ceased to determine what, if any, rebound occurred. 4) Depths of the recovery wells, monitoring wells and piezometers.

- In the initial investigation in 1984, soil boring logs TB-11 and TB-12 identified petroleum contaminated soils in Commercial Ave. directly north of Bud's Mobil. Petroleum contamination in both borings beneath Commercial Avenue was described as "old" petroleum and no free product was encountered. Soils in these borings were described as greenish in color at 8-9 feet below ground surface. The greenish color in the soil is an indicator of petroleum contamination.

- In 1989 free product was identified in MW-1 and MW-3 during a visit to Bud's Mobil. The firm attributes this free product to the high pumping rate at Bud's Mobil drawing free product from the Viola Quick Stop site. However, the borings TB-11 and TB-12 were identified as an "old" release and no free product was encountered. In addition, more tanks were found at Bud's Mobil in 1990. It is unknown what the condition of the tanks was but the tanks may be a more likely cause for the free product than the Viola Quick Stop site. Also, if well MW-1 (off-site) had 7-8 inches of free product and MW-3 (on-site) had 4-inches of diluted product in 1989, there could be another release from somewhere besides Bud's Mobil or the Viola Quick Stop.

- Groundwater elevations depict the area surrounding Bud's Mobil as relatively flat with groundwater moving south-southwest. Without groundwater elevation measurements during pumping activities, it is difficult to determine how much groundwater direction is affected by pumping activities. Exhibit 8, supplied by the firm, showing groundwater direction during pumping activities is likely unreliable.

- The argument is made that groundwater would not move naturally towards Bud's Mobil but only through artificial means. In order for the contamination to avoid Bud's Mobil naturally, it would have had to move due west first and then south. Groundwater does not behave in that way unless an object such as a building or utility impedes and redirects the flow. No buildings stand between the two sites and groundwater would not be affected by the utilities in the street because groundwater depth is below the utilities.

From the information that has been provided, it is possible that pumping activities in the past could have commingled the contamination plumes of both sites, however, there is no definitive evidence that the plumes were or would have remained separate if no pumping activities had occurred.

Although, as I noted previously, all reimbursement decisions are made at time of actual claim review I did want to provide you some feedback on the data that you submitted. I hope that the information is of use.

Sincerely,

William J. Morrissey
Environmental and Regulatory
Services Division

McNALLY, MALONEY & PETERSON, S.C.
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PARALEGALS
GAIL J. PRINDIVILLE
KATHLEEN J. NAVARRE

†CERTIFIED PUBLIC ACCOUNTANT

DRAFT

February 2, 2001

Mr. William Morrissey
Deputy Bureau Director
Environmental & Regulatory Services
P.O. Box 7838
Madison, WI 53707-7838

Re: Ann and Bill Bender
Buds Mobile and Viola Quick Stop
Bud's PECFA Claim Nos. # 54664-9999-42
BRRTS # 03-53-000183

Dear Bill,

This is in response to your letter of January 16, 2001. From our telephone conversation I know that the issue of merged plumes through remediation efforts is a new issue for the Department so it seems it is worth continuing the dialogue on the issue for that reason alone. Moreover, there are comments in your letter that indicate a serious misunderstanding both of my letter and what the WDNR file contains concerning this site. Finally, because of relatively frequent episodes over the years of gasoline fumes in the utility lines and in basements, this has been (and certainly has the potential to become again) a very high visibility site particularly now that remediation has been shut down over funding issues.

COMMINGLED PLUMES DID NOT RESULT FROM DISCHARGES

First and foremost, Section 101.143(1)(cs), Wisconsin Statutes defines an occurrence as a contiguous plume "resulting from one or more . . . discharges". The Statute does not say that a contiguous plume resulting from remediation activities is an occurrence. Those are two entirely separate causes of a contiguous plume. In the case of remediation activities, the commingling of the plume does not result from the discharges. Let me explain this the way I recall a

law professor explaining a similar point. It was a simple "Dick and Jane" type example but it helped me understand the concept.

Neighbors Harry and Jack have garages across an alley and back their cars out of the garage. If they crash into each other in the middle of the alley, the crash resulted from the neighbors taking their cars out of the garage. If they miss in the alley but an accident occurs later, the crash may not result from taking the cars out of the garages. Assume both Harry and Jack are stopped at a corner and a third driver rams into Harry driving him into Jack. Harry and Jack still had an accident and still took their cars out of the garage but the accident did not result from taking their cars out of the garage. Harry could have driven all the way to Florida and Jack to Alaska without an accident. The accident resulted from the failure of the third party to stop before ramming Harry. To say commingled plumes resulting from remediation activites is an occurrence under the statute is the same as saying Harry and Jack had the accident because they took their cars out of the garage not because they were rammed by another driver.

CRITICAL SAFETY CONCERNS

Let me repeat some of the history of the site so you will understand the seriousness of the environmental situation in Viola and the decision to stop funding. The project was initiated by the Wisconsin Department of Natural Resources (WDNR) in 1984 because of serious impacts to the environment, and a very real threat to the health, safety, and welfare of the residents of Viola from hydrocarbon vapors in sewers and commercial and residential basements. Vapors were experienced again in the 1990s and the Benders were required to install vapor detection and extraction equipment in some basements and the sewer utility line. As the situation exists today, significant concentrations of hydrocarbons remain in the shallow groundwater below the Village of Viola. These contaminants will continue to dissolve in, and migrate with, groundwater. In addition, in the opinion of Ayres, the volatile contaminants will continue to separate from the groundwater and are very likely to migrate into sewers and residential and commercial basements without use of engineering controls. Because the lack of funding has shut down the systems which detect and remove gasoline vapors in basements and sewer lines, safety will become critical as soon as the Spring thaw occurs.

CLARIFYING MY LETTER

As I noted above, when I compare my letter to your comments, I see a serious gap in communication and I want to clarify some points I made.

Historic groundwater level data is readily available (e.g. in the WDNR files) and consistently indicates a southwest flow direction across both sites in the absence of pumping. Exhibit 8, contained in my December 5, 2000 letter to you is an isoconcentration map depicting benzene concentrations in the water table aquifer during the course of the remediation efforts at the former Buds Mobil

site. Exhibit 8 clearly does not depict static groundwater flow conditions as indicated in your letter. The WDNR and Ayres have numerous historical groundwater flow maps that we would be happy to provide to you.

Exhibit 8 does show clearly that the Buds Mobil extraction system captured the Quick Stop plume. Contrary to your comments, the isoconcentration lines were in fact drawn based on water samples. For example, MW 11 had shown high concentrations of benzene until the Ayres extraction system was started in August 1996. By January 1997, MW 11 concentrations were under 5 ug/L. The rest of the isoconcentration lines were similarly drawn based on actual water sampling. Unlike the WDNR consultant's depiction of "old" plume versus "new" plume which was based on smell, Exhibit 8 was created using scientifically acceptable methods.

That brings me to the discussion concerning free product and the relationship of "old" versus "new" contamination contained in your letter. The presence of free product in groundwater is rarely evident from examination of soil cuttings. In addition, it is not acceptable from a scientific standpoint to date or to determine source locations of petroleum products or releases based on olfactory observations alone. To my knowledge, the "smell test" is not accepted by the WDNR or any court in Wisconsin. Many physical and chemical properties and reactions can modify the character and smell of hydrocarbons in different areas of the same plume. Age is just one of the possible causes for a particular smell of product.

The presence of free product in wells on the Buds Mobil property in 1989 was not attributed by me or Ayres to events at the Viola Quick Stop, as indicated in your letter. I stated that pumping during the WDNR's 1984 remediation caused the plumes to commingle. However, I never said or implied the Quick Stop plume was a plume of free product. The Quick Stop plume may or may not have contained free product. My statements concerning the capture of the Quick Stop plume had nothing whatsoever to do with the presence of free product at Buds Mobil.

Exhibit 6 in my December 5, 2000 letter, depicts groundwater flow during pumping, as predicted by a computer groundwater flow model which was created for general application. However, the model has been used and tested at the Buds Mobil site where Ayres has actual well data collected during pumping operations. Using the actual data to test and calibrate the computer model, Ayres was able to test the effects of the WDNR 1984 pumping simply by changing the location of the extraction well and the pumping rate to those used by the WDNR consultant in 1984. Exhibit 6 shows the capture zone when pumping 37.5 gallons per minute as was performed during DNR's 1984 remediation efforts. The Bender's actual, recently reconfigured, remediation system caused similar flow conditions as those shown in Exhibit 6 except with a smaller capture zone, at less than half the pumping rate used during the 1984 DNR remediation activities. In other words, the computer model results

shown in Exhibit 6 have been validated by an actual, onsite working system.

As stated earlier, a southwest groundwater flow direction has consistently been documented at the sites. Ayres' investigation indicates the source of contamination at the Viola Quick Stop is below the pump-island. The pump-island is located in the southwest corner of the property, northwest and considerably side gradient of the Buds Mobil site. The southwest flow from that pump island leads directly to MW 11 where, as I previously pointed out in this letter, there were high levels of benzene until Ayres started its first extraction system at Buds Mobil in 1996. A petroleum vapor venting system was installed in the basement of the commercial building adjacent to MW-11 at the direction of the WDNR because of gasoline vapors in the basement of a nearby store. Similarly, the WDNR also required Ayres to install vapor venting systems in the sewer line in this area because of the real risk of explosive vapor accumulation. Therefore, contrary to speculation about where the Quick Stop plume might go, the facts show it was very possible for the Quick Stop contamination plume to flow past (side gradient) the Buds Mobil plume in the absence of pumping. In contrast to the substantial factual evidence showing the remediation systems caused the commingling, there is truly nothing but speculation to indicate the plumes would have commingled naturally. Moreover, groundwater petroleum impacts within MW 11 and the presence of petroleum vapors in the basement of the adjacent commercial building suggest strongly that this location is directly down gradient of the Viola Quick Stop, confirming Ayres measured ground water flow direction in the area. Therefore, it is in fact less speculative to predict that the plumes would not have commingled than to speculate that they would. In any event, they did not commingle naturally and have been commingled as the result of remediation activities for over 15 years.

The Benders were obviously entitled to separate PECFA reimbursement caps before remediation efforts began. To make them subject to a single cap now will destroy them financially and is simply not required by the statute. Unless it is required by the statute (which it is not), what rationale is there for a single cap in the Bender's circumstances? I see none.

If additional specific information would help, we will provide what we can but the Commerce files contain almost all relevant information that exists. You are essentially asking us to prove a negative. We have provided factual information that demonstrates the plumes would not have to commingle naturally given static conditions. We have shown by factual evidence that conditions were not static and the plumes were commingled through remediation activities starting in 1984 - over fifteen years ago. No one investigated the commingling of plumes before 1984 possibly because of the need to immediately remove free product which was a safety hazard. Whatever the reason, the static groundwater flow and the extent of the plumes were not established before commencing the

groundwater pumping which commingled the plumes. We can not go back today and prove the plumes were not commingled at the time the pumping commenced. The decisions of the WDNR in 1984 and the resulting incomplete investigation and remediation were not in any way the fault of the Benders and they should not be held financially accountable for the decisions of your sister agency made before they owned Buds Mobil.

Because I do not wish to surprise you, I must tell you the Benders will pursue other help. They really have no choice given the Department's refusal of additional funding and the environmental and safety risk existing in Viola.

Very truly yours,

McNALLY, MALONEY & PETERSON, S.C.

Marvin I. Strawn

MIS
Email: mstrawn@mmplaw.com

JUDITH B. ROBSON

STATE SENATOR • WISCONSIN LEGISLATURE
CHAIR, HUMAN SERVICES AND AGING COMMITTEE
CO-CHAIR, JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 3, 2001

Mr. Ronald Nelson
1428 Shore Drive
Marinette, WI 54143

Dear Mr. Nelson:

Thank you for your email regarding what you perceive to be a conflict between section 51.61(1)(a) of the statutes and administrative rule HFS 94.04(1) and (5).

Section 51.61 of the statutes deals with patient rights. It provides, in relevant part, that each patient shall,

> Upon admission or commitment be informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

Section 51.61(1)(a), stats.

The Department of Health and Family Services has promulgated administrative rules to implement this statutory requirement.

Administrative rule HFS 94.04(1) states:

> Before or upon admission or, in the case of an outpatient, before treatment is begun, the patient shall be notified orally and given a written copy of his or her rights in accordance with s. 51.61 (1) (a), Stats., and this chapter. Oral notification may be accomplished by showing the patient a video about patient rights under s. 51.61, Stats., and this chapter. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

Administrative rule HFS 94.04(5) provides:

> All notification of rights, both oral and written, shall be in language understood by the patient, including sign language, foreign language or simplified language when that is necessary. A simplified, printed version of patients [sic] rights shall be conspicuously posted in each patient area.

MADISON OFFICE: STATE CAPITOL, PO BOX 7882, MADISON, WI 53707 • 608/266-2253
DISTRICT ADDRESS: 2411 EAST RIDGE ROAD, BELOIT, WI 53511
LEGISLATIVE HOTLINE: 800/362-WISC(9472)
TOLL FREE: 800/334-1468

You complained that HFS 94.04(1) conflicts with the statute it implements because the statute requires oral notification of patient rights, but the department instead permits a facility to show a video about patient rights.

I do not believe that the showing of a video about patient rights violates the requirement that each patient be informed orally about patient rights. An oral communication is one where one person speaks and another person hears the words spoken by the first person. The showing of a video complies with the statutory requirement that a patient be orally informed of patient rights because spoken words are presented by the treatment facility and heard by patients.

You also complained that the statute requires that the entire section of the statutes dealing with patient rights be posted in each patient area, whereas the implementing administrative rule only requires a simplified version of patient rights to be posted.

I do not believe that this administrative rule violates the statutory requirement that patient rights be posted in patient areas. The statutory section 51.61 covers four and one-half pages with 10-point text. Much of the text is devoted not to the statement of rights in and of themselves, but to detailed explanations of how those rights are to be interpreted, safeguarded and, in some cases, voluntarily waived by the patient. A simplified statement limited to the rights held by each patient, separate from confusing language about the legal interpretations of those rights and the circumstances in which the rights may be waived, better fulfills the legislative intent of informing patients about their rights.

In short, posting a simplified version of the list of patient rights ensures that the list is in language that can be understood by every patient. This is preferable to printing all the statutory language, which may or may not be understood by a patient.

I share your concern about abuse of mentally ill and developmentally disabled patients. However, I do not believe that the administrative rules you have brought to my attention are contrary to the statutes that they implement. Therefore, I respectfully decline your request to have the Joint Committee for Review of Administrative Rules hold a hearing on this issue.

Thank you again for communicating with me regarding this issue.

Sincerely,

Senator Judith B. Robson
15th Senate District

JBR:da

FYI

Soderbloom, Kathy
From: Soderbloom, Kathy
Sent: Friday, April 06, 2001 11:21 AM
To: 'ctn80478@webtv.net'
Subject: RE: REQUEST FOR INFORMATION

Dear Ron,

Senator Robson has mailed a response to your inquiry. You should receive it early next week. Please let me know if it doesn't arrive.

Kathy

-----Original Message-----
From: **ctn80478@webtv.net [mailto:ctn80478@webtv.net]**
Sent: Friday, April 06, 2001 8:22 AM
To: Kathy.Soderbloom@legis.state.wi.us
Subject: REQUEST FOR INFORMATION

This is Ronald Nelson. I was referred to you by David Austin in reference to an updated status report that I am seeking which relates to a formal complaint that I filed with Senator Robson concerning specific wording within HFS 94.04 which is in direct violation of the legislative intent of sec. 51.61(l), Stats. Said complaint was originally filed in Senator Robson's capacity as Co-Chairperson of the JCRAR. I am requesting that you please provide me with a status update as soon as possible. I appreciate your time and assistance and will be looking forward to receiving your response. I can be contacted at the above email address.

Judith B. Robson

Wisconsin State Senator

January 16, 2001

Mr. Patrick Saunders, # 224303
P.O. Box 9900
Boscobel, WI 53805-9900

Dear Mr. Saunders:

Senator Weeden is no longer a member of the Wisconsin Senate. Your letter was forwarded to me because I am now the Senate co-chair of the Joint Committee for Review of Administrative Rules.

You state that administrative code DOC 303 has not been published in the administrative register. I believe that this is incorrect. The Department of Corrections revised DOC 303 via clearinghouse rule 97-013.

A portion of this rule was published in Administrative Register 535 on July 31, 2000 with an effective date of August 1, 2000. (This portion of the rule affected section DOC 303.75, DOC 303.76 and DOC 303.81).

The remainder of the rule was published in Administrative Register 540 on December 31, 2000 with an effective date of January 1, 2001.

You also ask that the Department of Corrections administrative code be revised to restore three 2-hour visits per month for inmates who are being held in administrative confinement. This is not something that the Joint Committee for Review of Administrative Rules can do. The committee does not have any power to write administrative rules. Only the department can write rules. Alternatively, the same effect could be achieved through a legislative bill (but this is obviously difficult).

I hope this information is helpful to you.

Sincerely,

Senator Judith B. Robson
15th Senate District

JBR:da

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253
District Address: 2411 East Ridge Road, Beloit, WI 53511
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

Mr. Patrick A. Saunders #224303
S.M.C.I
P.O. Box #9900
Boscobel, WI. 53805-9900

Mr. Timothy Weeden, Senator
Joint Committee for Review of Administrative Rules
South, State-Capitol (Room) 31.
P.O. Box 7882
Madison, WI. 53707-7882

January 7th, 2001

Subject: Administrative Rules.

Dear Mr. Weeden;

I'm writing To Take This letter to you and your office To State I hereby Object To S.M.C.I (super-max Correctional Institution) are arbitrary Enforcing The New DOC, Ch. 303 Rule hand book upon all said Inmates, which has not been Published in The Wisconsin Register, Nor published or Promulgated Under Chapter § 227 Wis, Stats. and in Violation of Article 4, Sec 17 (2) Wisconsin Constitution. § 227.11 (2)(d)(e) Wis. Stats and Also § 227.135 (2)(3) Wis. Stats

Also To State That The Department of Corrections has placed a Restriction upon Non-Punitive Inmates as To Visitation hours, according To Chapter 309.16(1) Jan. 2000 All Administrative Confinement Inmates Were allowed three Two hour Visits Per Month and Nothing less.

Now under Chapter 309.16(4) Register, Jun, 2000 No. 534 States Each Institution Shall permit each inmate IN a Segregated Status The opportunity for Visitation at least ONE hour per Week, with the exception of Controlled and observation, Which Require The approval of

Warden, However The 309.16(1) Admin-Code language was Very Clear. when it Stated within its language that all Administrative Confinement Inmates Stated "But Shall Provide an opportunity for Not less Than The following:

"Administrative Confinemeat Three 2-hour visits Per month"

Now This entire language has been erased from The 309. Admin-Code There by placing all administrative into the Same Catagory as a Segregated Punitive Status. and the langugе in 308. admin-Code Clearly Stakes All adm-Conf. Inmates are in a NON Punctive Status.

I, along with others has been Subjected To a harsher Punishment Which has been inflicted upon us, Without any form of Due Process. Which Violates all our fourteen Admendment Rights garanteed by the U.S. Constitution and also Violates The EX-POST-FACTO, Clause Under U.S. Constitution ART, 1, § 9 and 10, also Wisconsin Constitution Art, 1 § 12.

This inmate has filed a Inmate Complaint ON This matter Doc Complaint No. SMC1-2000-35826 ON 12/13/2000.

This Inmate ask That The three 2 hour Visits Be Re Established and Revise The 309. To State Such.

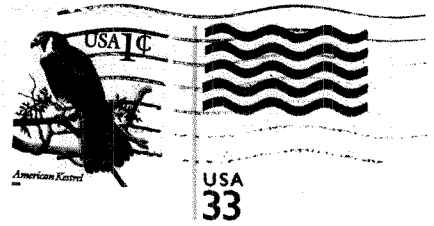
Thank You for Your Time and full Consideration in this Matter

Submitted by
Patrick A. Saunders

CC/ File P.A.S.

Patrick Saunders #224303-A
Supermax Correctional Institution
P.O. Box 9900
Boscobel WI. 53805-9900

MADISON WI
PM
8 JAN
2001



Mr. Timothy Weeden, Senator
Joint Committee for Review of Administrative Rules
South State Capitol
Room #31
P.O. Box 7882
Madison WI. 53707-7882

Gen. Doc. 309.
Legal Correspondence

Judith B. Robson
Wisconsin State Senator

January 16, 2001

Mr. Eric Washington, #242170
P.O. Box 9900
Boscobel, WI 53805-9900

Dear Mr. Washington:

Senator Weeden is no longer a member of the Wisconsin Senate. Your letter was forwarded to me because I am now the Senate co-chair of the Joint Committee for Review of Administrative Rules.

You state that administrative code DOC 303 has not been published in the administrative register. I believe that this is incorrect. The Department of Corrections revised DOC 303 via clearinghouse rule 97-013.

A portion of this rule was published in Administrative Register 535 on July 31, 2000 with an effective date of August 1, 2000. (This portion of the rule affected section DOC 303.75, DOC 303.76 and DOC 303.81).

The remainder of the rule was published in Administrative Register 540 on December 31, 2000 with an effective date of January 1, 2001.

I hope this information is helpful to you.

Sincerely,

Senator Judith B. Robson
15th Senate District

JBR:da

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Mr. Weeden 1

My name is Mr. Eric M. Washington #242170, a inmate at the Supermax prison in Boscobel and I write about this New Doc 303; it is illegal as it has never been publ the Wisconsin Register nor has it been Duly Promulgated by t Legislature Committee in Madison.

So I hope to hear from you a "Solution" to this problem because SMCI officials are t inforce this New Doc 303.

Respectfully yours,

Mr. Eric M. Washington #242170
Supermax, Corr. Inst
P.O. Box 9900
Boscobel, Wi 53805

Mr. Eric M. Washington # 242170
S.M.C.I.
P.O. Box 9900
Boscobel, Wi 53805

Senator Timothy Weeden
Joint Committee For Review Of Administrive Rule
Room 37, South State Capitol
P.O. Box 7882
Madison, Wi 53707-7882

53707+7882

Judith B. Robson
Wisconsin State Senator

December 20, 2000

Representative Scott Gunderson
7 West

Dear Representative Gunderson:

Thank you for your recent letter requesting that the Joint Committee for Review of Administrative Rules hold a public hearing on the decision by the Department of Natural Resources to impose a nighttime speed limit for snowmobiles.

I respectfully disagree that this rule is without statutory authority. Consequently, I do not favor having the committee hold a hearing on this rule.

Section 227.11(2)(a) of the statutes says, "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation."

The courts have interpreted this provision to mean that where a statute is vague or susceptible to multiple interpretations, it is within the authority of an agency to provide a more specific interpretation via administrative rule.

Regarding snowmobiles, section 250.10(a) of the statutes provides that "no person shall operate a snowmobile in the following manner: (a) at a rate of speed that is unreasonable or improper under the circumstances."

The snowmobile speed limit rule implemented by the DNR defines the phrase "unreasonable or improper" to mean speeds in excess of 50 miles per hour at night. I believe that the DNR has authority to do this because the phrase "unreasonable or improper" is vague and susceptible to more than one interpretation and therefore needs to be defined more precisely.

The legislature is free to amend the statute to provide a more precise definition of the phrase "unreasonable or improper." This action would then supercede the DNR rule.

Thank you again for writing to me about this issue.

Sincerely,

Senator Judith B. Robson
15th Senate District

JBR:da

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253
District Address: 2411 East Ridge Road, Beloit, WI 53511
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

Scott Gunderson

STATE REPRESENTATIVE • 83RD DISTRICT

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P.O. Box 8952
Madison, WI 53708
(608) 266-3363

Toll-Free:
(888) 534-0083

Fax:
(608) 282-3683

E-Mail:
Rep.Gunderson@
legis.state.wi.us

83rd District:
P.O. Box 7
Waterford, WI
53185

(414) 895-6254

December 15, 2000

The Honorable Judith Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South State Capitol
Madison, WI 53702

The Honorable Glen Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Senator Robson and Representative Grothman,

I am writing to request the Joint Committee for the Review of Administrative Rules hold a public hearing at our January meeting on the emergency rule recently passed by the Natural Resources Board which limits snowmobile speeds at night to 50 miles per hour.

While I understand the intent behind the Department of Natural Resources and the Natural Resources Board in regards to safety, I do not believe that they have the authority to make this kind of emergency ruling. First and foremost, the legislature is the branch of government that enacts laws. It is not the role of a state agency to legislate for the people of Wisconsin. Secondly, the state cannot legislate common sense to the people who will be snowmobiling. There are already laws that govern snowmobiling, and these laws should be more uniformly enforced so that our snowmobile trails will be a safer environment for everyone to enjoy. In addition, the DNR already has the authority to stop snowmobilers for operating "at a rate of speed that is unreasonable or improper under the circumstances," [350.10(1) (a) WI statutes]. Finally, the Legislature already has two separate committees looking at this issue. I believe we should wait until these committees complete their work and offer recommendations before enacting any further laws.

Thank you for your time and consideration. By working together with all state and local parties, through the correct legislative channels, the issue of unsafe snowmobile use can be resolved in a safe and agreeable manner to all parties involved.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly

Judith B. Robson
Wisconsin State Senator

December 20, 2000

Representative Lorraine Seratti
18 North

Dear Representative Seratti:

Thank you for your recent letter requesting that the Joint Committee for Review of Administrative Rules hold a public hearing on the decision by the Department of Natural Resources to impose a nighttime speed limit for snowmobiles.

I respectfully disagree that this rule is without statutory authority. Consequently, I do not favor having the committee hold a hearing on this rule.

Section 227.11(2)(a) of the statutes says, "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation."

The courts have interpreted this provision to mean that where a statute is vague or susceptible to multiple interpretations, it is within the authority of an agency to provide a more specific interpretation via administrative rule.

Regarding snowmobiles, section 250.10(a) of the statutes provides that "no person shall operate a snowmobile in the following manner: (a) at a rate of speed that is unreasonable or improper under the circumstances."

The snowmobile speed limit rule implemented by the DNR defines the phrase "unreasonable or improper" to mean speeds in excess of 50 miles per hour at night. I believe that the DNR has authority to do this because the phrase "unreasonable or improper" is vague and susceptible to more than one interpretation and therefore needs to be defined more precisely.

The legislature is free to amend the statute to provide a more precise definition of the phrase "unreasonable or improper." This action would then supercede the DNR rule.

Thank you again for writing to me about this issue.

Sincerely,

Judy

Senator Judith B. Robson
15th Senate District

JBR:da

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253
District Address: 2411 East Ridge Road, Beloit, WI 53511
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

STATE REPRESENTATIVE 36TH ASSEMBLY DISTRICT

Lorraine M. Seratti

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COMMITTEE ASSIGNMENTS

Chair, Small Business and Economic Development

Vice-Chair, Tourism and Recreation Committee

Joint Committee on Review of Administrative Rules

Joint Legislative Council Committee

Governor's Council on Forestry

Housing Committee

December 11, 2000

Senator Judy Robson, Chair
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Representative Glenn Grothman, Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Senator Robson and Representative Grothman:

Recently the Department of Natural Resources brought a request to the Natural Resources Board to create an Emergency Rule relating to the creation of a snowmobile speed limit. This action, in my opinion, constitutes subversion by the DNR of legislative authority.

I hereby request that the committee hold a hearing immediately on this issue to allow for a full public and legislative review of this issue.

Your prompt response to this request would be greatly appreciated.

Sincerely,

Lorraine M. Seratti

Lorraine M. Seratti
State Representative
36th Assembly District

SEP 07 2000

State Senator
Robert T. Welch

September 6, 2000

Senator Judith Robson, Chairperson
Joint Committee for the Review of Administrative Rules
15 South, State Capitol
Madison, WI 53703

Dear Senator Robson:

Enclosed you will find a copy of a letter I sent to Secretary George Lightbourn earlier this year, expressing my objection to Chapter Adm. 43, relating to non-municipal Electric Utility Public Benefits Fees, filed August 22, 2000.

As I stated before, this "public benefits fee" is nothing more than a thinly disguised tax. Imposing it on consumers in this manner is another blatant misuse of the emergency rules process. I would respectfully request that you place this rule on the agenda for the next Joint Committee for the Review of Administrative Rules meeting.

Please feel free to call me if you have any questions.

Sincerely,

ROBERT T. WELCH
Wisconsin State Senator
14th Senate District

Enclosure

State Capitol ■ P.O. Box 7882 ■ Madison, WI 53707-7882 ■ 608/266-0751 ■ Fax 608/267-4350

State Senator
Robert T. Welch

COPY

June 8, 2000

Secretary George Lightbourn
Department of Administration
P.O. Box 7864
Madison, WI 53707

Dear Secretary Lightbourn:

I am writing to express my objection to Chapter Adm. 43, relating to non-municipal Electric Utility Public Benefits Fees.

This "public benefits fee" is nothing more than a thinly disguised tax, and I feel that imposing it on consumers in this manner is a blatant misuse of the emergency rules process. I will be registering my objection to this fee at the public hearing on June 16th, 2000, and I will also be calling on the Chairpersons of the Joint Committee for the Review of Administrative Rules to place this rule in front of the full committee.

Please feel free to call me if you have any questions.

Sincerely,

ROBERT T. WELCH
Wisconsin State Senator
14th Senate District

cc: Governor Tommy G. Thompson
Members of the Joint Committee for the Review of Administrative Rules
Speaker Scott Jensen
Senate President Fred Risser

State Capitol ■ P.O. Box 7882 ■ Madison, WI 53707-7882 ■ 608/266-0751 ■ Fax 608/267-4350

Honorable Judy Robson
Senator, 15th Senate District
P.O. Box 7882, Room 15S.
Madison, WI 53707-7882

January 23, 2000

Dear Senator Robson,

I see from the enclosed article from a local newspaper that you are having your own problems with the Wisconsin Department of Revenue. I am enclosing a copy of a letter (with supporting documentation) that I recently mailed on January 14 to Senator Roger Breske and Representative Sarah Waukau.

Could I ask for your support relative to changes and reform in the Wisconsin Department of Revenue? I would greatly appreciate the names of other State Senators and State Representatives who would also be interested in the enclosed material.

Sincerely,

Bob Steigerwaldt

Bob Steigerwaldt
N11005 Pickerel Creek Road
Tomahawk, WI 54487
Ph 715 453-8882

Senate hears debate on farmland tax

Committee says Revenue Department plan 'bypassed the legislative process'

By Jenny Price
The Associated Press

MADISON — The state Revenue Department is ignoring the law and the Legislature's authority in bypassing a phase-in period for millions of dollars in new tax breaks for farmers, lawmakers told department officials Thursday.

An emergency rule invoked by the department means that as of Jan. 1, all farmland in Wisconsin will be assessed for property taxes based on its agricultural use and not its potential as a building site for homes or commercial development.

The tax breaks were to have been phased-in through Jan. 1, 2009.

"The farm community is in an emergency crisis state," Revenue Secretary Cate Zueske told members of the Senate Committee for Review of Administrative Rules.


Cate Zueske

But the committee chairwoman, Sen. Judy Robson, D-Beloit, said the department did not have the authority to speed up full implementation of the tax breaks for farmers.

"We feel as though you have bypassed the legislative process and are on very shaky ground," Robson told Zeuske.

Robson called the hearing to take testimony about the rule. The committee did not take a vote, and one is not scheduled.

Zueske said the department followed state statutes when it acted on the October recommendation of the Farmland Advisory Council, which oversees the assessments.

Bill Ford, a Legislative Council attorney who evaluated the emergency rule, said the department would not prevail if the rule were challenged in a lawsuit.

"If someone were to sue, and this would go to court, the court would likely decide they do not have the authority," Ford said.

Gov. Tommy Thompson said the law clearly allows the department to enact the rule.

"I think there is an emergency situation that the department responded to," Thompson said.

The rule ends the gradual phase-in of the assessments after only two years. When fully implemented, the assessment method will provide an estimated $137 million in tax breaks for owners of farmland next year.

The Wisconsin Farm Bureau Federation petitioned the Revenue Department in October to eliminate the phase-in, which it said will save farmers an additional $34 million in property taxes next year.

Opponents of the tax breaks, including Milwaukee Mayor John Norquist, sued the Revenue Department in 1997. The mayors claimed the law violated a constitutional requirement that requires assessing all farmland uniformly. The lawsuit was dismissed by a Dane County Circuit Court judge, a decision that was upheld by a state appeals court in October.

Roger Cliff, the farm bureau's executive director, called the Norquist and other mayors "the Grinch that is stealing Christmas from the farmers."

Fully implementing use-value assessments next year will take $2.2 billion of the property tax rolls statewide and cause property taxes to rise by an average of about $19 on a home with an assessed value of $100,000, the Revenue Department said.